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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 27th June 1958

S.O. 1260.—In continuation of Election Commission's notification No. 82/444/57/2265, dated the 15th March, 1958/Phalguna 24, 1879 Saka, published in the Gazette of India, Extraordinary, Part II—Section 3, Sub-section (ii), dated the March 21, 1953/Phalguna 30, 1870 Saka (No. 33), under section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgment of the High Court of Judicature at Bombay, delivered on the 28th April, 1958 in the appeal filed by Shri Digambar Rao Bindu son of Govind Rao Bindu R/o Nanded City, Bombay State, against the order dated the 7th February, 1958, of the Election Tribunal, Nagpur, in the Election Petition No. 444 of 1957.

APPEAL NO. 160 OF 1958 FROM ORIGINAL DECREE

Digambar Rao Bindu, son of Govind Rao Bindu. (Original Petitioner)—*Appellant.*

Versus

Dev Rao Kamble son of Namdev Rao and others. (Original Respondents)—*Respondents.*

Appeal against the decision of K. T. Mangalmurti, Esquire, Member, Election Tribunal at Nagpur, in Election Petition No. 444 of 1957.

Mr. G. A. Ekbote with M/s. H. G. Vaishnav, K. B. Deshpande, J. S. Sawant & S. L. Newasekar, Advocates for the Appellant.

M/s. V. D. Mangde and P. S. Nadkarni with M/s. P. P. Tajare and N. M. Kamble, Advocates for Respondent No. 2.

Corn: Chagla, C. J. & S. T. Desai, J

28th April 1958

Oral Judgment (Per Chagla, C.J.):

This is an appeal from a decision of the Election Tribunal holding that the election of Harihar Sonule to the Lok Sabha was valid and dismissing the petition filed by the defeated candidate Digambar Rao Bindu. Now, the constituency,

with which we are concerned, is a two member constituency of Nanded, and one of the seats is reserved for the Scheduled Caste. In the general election, the result of the votes obtained by the four candidates was as follows:

Kamble, a member of the Scheduled Cast obtained	..	1,77,268
Hari Har Sonule obtained	..	1,49,683
Digambar Rao Bindu obtained	..	1,46,686

and

Vajendra Kabre obtained	..	1,32,075
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Kamble was declared elected to the reserved seat and Sonule was declared elected for the other seat which was not reserved, and it is the election of Sonule which was challenged by the petitioner.

We had a very able and interesting argument presented to us on behalf of Bindu by Mr. Ekbote, and his main contention is that inasmuch as Sonule was nominated for the reserved seat and was not nominated for the general seat, Sonule can only be elected for the reserved seat and cannot be elected for the general seat. Now, in our opinion, that contention overlooks the basic principles of Election Law in our country and the principle underlying the reservation of seats. Before we deal with the technical aspect of the matter and after all the Election law is a technical law—let us consider the broad and general aspect of the matter. Our Constitution contemplates only one class of citizens. It makes no distinction between a citizen and a citizen on grounds of caste, community or colour and in order to carry out both the idea of common citizenship and a secular state, it provides for one Common Electoral Roll, and every one, who is a citizen, and who has attained a certain age and who is not otherwise disqualified, is entitled to be on this common roll and elections are held from each constituency delimited for that purpose by citizens on the roll voting for those who stand for election. The one unusual feature, which our Constitution has introduced and which one does not find in the Constitution of other countries, because conditions in our country are different, is that certain special rights are conferred upon members of the Scheduled Caste and Scheduled Tribes.

Now, in order to understand Mr. Ekbote's contention and to arrive at a correct conclusion, one must clearly realise what these special privileges conferred upon the members of the Scheduled Cast are. Fortunately, they have not been given the right to elect their representatives in a separate electorate. Nor have they been allowed to have a separate roll consisting of members of the Scheduled Caste. The only privilege which the Constitution confers upon them is the privilege of having seats in Parliament commensurate with their population, and in order to carry out this object, as in the prevailing social conditions, it may not be possible to obtain a proper representation for the members of the Scheduled Caste, the Constitution has provided that the seats should be reserved for the Scheduled Caste proportionate to their population. Now, the reservation clearly means that whatever the verdict of the electorate, certain number of members of the Scheduled Caste must be returned to Parliament. In other words, when a member of the Scheduled Caste contests an election with others who do not belong to the Scheduled Caste, he has this advantage that with regard to the reserved seat, whatever the number of votes he may secure, one seat must go to the member of the Scheduled Caste and the member of the Scheduled Caste who gets the largest number of votes would secure the seat, although in relation to the members of the other communities or castes, he might have secured much less votes. But it must be clearly realised that the reservation is a privilege, it is a concession which the Constitution makes to the Scheduled Caste, which is something more than what the members of other communities are entitled to and which must not be construed in any way as to cut down the ordinary rights which a member of the Scheduled Caste has along with the other citizens of India.

Now, a member of the Scheduled Caste is as much a citizen as a member of any other caste. He is on the same electoral roll, he has the same right to vote and he had the same right to be elected. Therefore, the reservation does not mean that if there is a two member constituency and one seat is reserved for the Scheduled Caste, only one member of the Scheduled Caste can be elected to the Parliament. Reservation means that at least one member should be elected. There is nothing in law to prevent both the seats being held by members of the Scheduled Caste and electors voting for two members of the Scheduled Caste to represent them in Parliament. It is not as if the Constitution while setting

its face against separate electorates and separate rolls permits a sort of compartmental election in a multi member constituency where a reservation is made for a member of the Scheduled Caste. The election is not compartmental. The election is general, and it is only when the results are declared that the question arises whether the reservation clause has come into play or not. Now, take this very election, it was a two-member constituency and one seat was reserved for the Scheduled Caste. Inasmuch as Kamble topped the poll and as he was a member of the Scheduled Caste, he was automatically elected and strictly the principle of reservation had not to be invoked. That principle would have to be invoked only if the first two seats had gone to persons who were not members of the Scheduled Caste. Then the returning Officer would have had to look at the list and find out a member of the Scheduled Caste who obtained the highest number of votes. But, as we have just observed, inasmuch as Kamble received the confidence of his voters and was brought in at the top of the poll, in reality he came in not as a result of reservation but as a result of securing the highest number of votes from the electors. Kamble having been elected, no further question with regard to the Scheduled Caste arose and whoever was the person who stood second had the right to be elected.

Now, where Mr. Ekbote goes wrong is this that he wants us to consider the fact that although Sonule received the next largest number of votes after Kamble, he had the label of Scheduled Caste attached to him, and therefore, the Scheduled Caste having already received one seat and Sonule not having been nominated for the General seat, he should not have been elected but the third man, Bindu, should have been elected. Now, that submission is totally opposed to the basic principles which we have sought to enunciate. Once a member of the Scheduled Caste was elected, which in this case was Kamble, no further question of considering the caste or community of the other members can possibly arise. They all stand on the same footing; they have the same rights and it is left to the electors to elect whomsoever they liked. It is difficult to understand on principle, apart from the technical rules with which we shall deal, why Sonule should have filed two nomination papers instead of one. As a matter of fact, in this case he had filed 4 nomination papers, but that was done by him for abundant caution lest one or other of them should be defective. But we will assume for the sake of this argument that he had filed only one nomination paper making the requisite declaration that he was a member of the Scheduled Caste and that he was contesting for the reserved seat. Now, is there anything in principle which necessitates his filing a second nomination paper declaring his intention to contest the general seat? A member of the Scheduled Caste must have all the qualifications which a citizen not belonging to that caste must possess in order to contest the election. In order to qualify for the reserved seat, a citizen in India should have something more than what the other citizens possess and that something more is that he should be a member of the Scheduled Caste. But inasmuch as Sonule had all the other qualifications which Bindu or Kabra had when he put forward his candidature for the reserved seat, automatically he was qualified to stand for the general seat and in the nomination paper for the reserved seat was implicit the nomination for the second seat which was not the reserved seat. It is difficult to understand why any candidate who is entitled to be returned for one seat should file his nomination for two seats; and the only way Mr. Ekbote can explain this position is that according to him the two seats are entirely different, they should be separately treated, separately looked upon and separately contested. He wants us to draw an impassable barrier between the seat reserved for the Scheduled Caste and the general seat. In our opinion neither the Constitution nor the Act nor the principles which we have enunciated support the contention of Mr. Ekbote that the two seats should be put in separate compartments. The election, it must be remembered, is one, and the principle of reservation comes into play in order to confer a privilege upon a member of the Scheduled Caste. But that privilege does not detract from the fact that the member of the Scheduled Caste is an Indian citizen having all the qualifications to contest the general seat, and if electors choose to have confidence in a member of the Scheduled Caste so as to elect him for the general seat, the fact that he was nominated only for the reserved seat cannot possibly militate against the validity of his election.

Now, with these principles in mind, let us turn to the relevant provisions of the Act. The first and the most important provisions in sub-clause (4) of the section 54 and this deals with the counting of votes: "If the number of contesting candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats and the total number of contesting candidates also exceeds the total number of seats to be filled, a poll shall be taken, and after the poll has been taken the returning officer shall first declare those who, being qualified to be chosen to fill the reserved seats have secured the largest number of votes, to be

duly elected to fill the reserved seats". So, this is the first duty of the Returning Officer, and in this case as we have already pointed out, Mr. Kamble having received the largest number of votes was duly declared to be elected to fill the reserved seat; and then comes the provision which has raised some controversy as to its interpretation in this appeal: "Then declare such of the remaining candidates as have secured the largest number of votes to be duly elected to fill the remaining seats". Now, giving to this language its plain and natural meaning, it is clear that after Kamble was declared to be elected, the duty of the Returning Officer was to turn to the remaining candidates and find out who has secured the largest number of votes among them and declare him to be elected. What Mr. Ekbote says is that when you construe the expression "remaining candidates" you must exclude Sonule from the candidates. We find no warrant for this submission. If the election was one--and we have all the time been emphasizing that basic fact then the election of Kamble for the reserved seat left not only Bindu and Kabre but also Sonule as the remaining candidates. They were remaining candidates in the sense that they were not elected and it is from the category of these remaining candidates that the Returning Officer has to declare that one is elected who has naturally obtained the largest number of votes. It seems to us that the language used in the last part of Section 54(4) is clear and presents no difficulty. If the Returning Officer had proceeded differently, he would have contravened the provisions of this sub-section. He would have no authority to exclude from consideration of remaining candidates Sonule who had not been returned to fill the reserved seat.

Now, here again, Mr. Ekbote says that Sonule is not a remaining candidate because he has not filed his nomination paper for the general seat and, therefore, we again come back to the only question that has been raised on this petition: Whether there is any thing in the Act which requires Sonule to file two nomination papers for the seat that he was contesting. Now, he was contesting one seat for Parliament. Being a member of the Scheduled Caste, he was contesting the reserved seat. If he failed to get that seat, he was still contesting a seat for Parliament and in that case the seat would be the general seat and not the reserved seat. Now, we must find something clear and categorical in the Act which requires a member of the Scheduled Caste separately to file a nomination to the effect that he was contesting the reserved seat and he was also contesting the general seat, although in law and apart from the principle of reservation, he would be entitled to be elected for that seat if he got a sufficiently large number of votes from the electorate.

Now, turning to the provisions with regard to nomination, Section 32 of the Act provides:

"Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act."

It is true that in the case of a candidate for a reserved seat, his qualification, as already pointed out, has to be something more than the qualification of a person not belonging to the Scheduled caste.

Then, we come to Section 33(2),

"In a Constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State".

Now, this is a special qualification which a candidate for a reserved seat requires, and in the case before us Sonule had made the necessary declaration. He was also qualified to be a candidate for the general seat because without such a qualification he would not be qualified even for the reserved seat. Therefore, all that Section 33(2) requires is a separate declaration in the nomination paper in the case of a person who is contesting a reserved seat. Then Section 33(6) provides that nothing in this Section shall prevent any candidate from being nominated by more than one nomination paper for election in the same constituency; and we agree with the view that the Tribunal has taken that this sub-section, while assuming the ordinary principle that there could be only one nomination paper for one seat, permits more nomination papers to be filed for greater caution and for greater safety lest a single nomination paper be rejected due to any reason. Mr. Ekbote wants to rely on this sub-section for contending that this sub-section prescribes two nomination papers in the case of a member of the Scheduled Caste

who is contesting both the reserved seat and the General seat. Now, strictly, sub-section (6) of section 33 throws no light either way on the controversy which we have to decide.

Now, Section 34 is rather interesting. It provides for deposits and gives a special concession to a member of the Scheduled Caste that instead of Rs. 500/- he has to deposit only Rs. 250/-, and Mr. Ekbote concedes that even if a member of the Scheduled Caste contests the general seat and even if he files two nomination papers, he has only got to make this deposit. Now, the fact that only one deposit has to be made goes to show that in the eye of law a candidate can only be elected to one seat and it makes no difference whether that seat is a reserved seat or a general seat. The deposit is in relation to his attempt at being returned to Parliament. It makes no difference how he is returned, whether as a member of the Scheduled Caste or as a member of any other caste. So long as he is qualified, so long as he is properly nominated, the only significant question that has got to be considered is whether he has been elected to Parliament by his fellow citizens, and it is for the purpose of that election that Section 34 requires a deposit and a special privilege is conferred upon a member of the Scheduled Caste that his deposit should be Rs. 250/- and not Rs. 500/-.

Mr. Ekbote has referred to Section 37, which deals with withdrawal of candidature and Mr. Ekbote's contention is that if our view were to be accepted, then it would not be open to a member of the Scheduled Caste to withdraw from his candidature for the reserved seat and continue his candidature for the general seat or *vice versa*. Now, that submission is again based on a view, which is not the correct view. Sonule could not divide himself into two separate entities, a member of the Scheduled Caste and an Indian Citizen. He offered himself for election and under Sec. 37 it was open to him to withdraw his candidature within the time mentioned in that section. If he withdrew, that was an end of the matter. He could not say that I will withdraw as a member of the Scheduled Caste and not as an Indian citizen or I will withdraw as an Indian citizen and not as a member of the Scheduled Caste. Underlying all these submissions of Mr. Ekbote is the view that the constitution still retains the distinction between one citizen and another. The distinction is there but it is for a limited purpose and it would be wrong to give to that distinction a wider connotation or a wider effect which was not intended by the Constitution itself.

Then, we have Section 55, which is enacted for avoidance of doubt, and this section emphasises the fact that a member of Scheduled Castes or of the Scheduled Tribes shall not be disqualified to hold a seat not reserved for members of those castes or tribes, if he is otherwise qualified to hold such seats under the Constitution and this Act. This section was enacted precisely to meet arguments similar to those advanced by Mr. Ekbote. The Act makes it clear that the fact that a member of the Scheduled Caste is qualified for the reserved seat does not disqualify him for the other seat. What Mr. Ekbote points out is the expression "is otherwise qualified" and he reads in that expression a filing of a nomination paper. In our opinion, the expression "is otherwise qualified" means that he has all the qualifications required under the constitution or under the Act, and if filing of a nomination paper is not required under the Act, then we cannot read that qualification in Section 55.

Section 149 deals with casual vacancies and Mr. Ekbote says that for this section also a reserved seat is considered as a separate entity and what is urged by him is that if a reserved seat were to become vacant, then it would have to be filled up only by a member of the Scheduled Caste. It is perfectly true that in such a situation only the members of the Scheduled Caste would be able to contest for the election and no question of reservation or the problem that we are considering will arise. We do not understand how that section can possibly throw any light on the question as to whether a separate nomination is required for the purpose of a member of the Scheduled Caste contesting a general seat.

Our attention has been drawn by Mr. Ekbote to the relevant provisions of the Constitution. Article 84 deals with the qualifications for membership of Parliament and the qualifications are: citizens of India, age in the case of a seat in the House of the People is not less than twenty-five and such qualifications as may be prescribed by or under any law made by Parliament; and the Representation of the People Act has enacted section 4 which requires qualifications in the case of a reserved seat that he must be a member of the Scheduled Caste and in the case of any other seat that he should be an elector for any Parliamentary constituency. Article 325 prescribes a general electoral roll. Article 326 prescribes adult suffrage and confers that right upon every adult of not less than 21 years of

age on the General Roll unless he is disqualified on any one of the grounds mentioned in that article; and Article 330 is the Article which confers upon the Scheduled Caste or the Scheduled Tribes the privilege of reservation of seats to the House of the People proportionate to their population.

It was suggested by Mr. Ekbote that to decide what we propose to decide would be tantamount to conferring upon the members of the Scheduled Caste a privilege higher than that conferred by Article 330 and to discriminate between members of the Scheduled Castes and those who do not belong to those castes. We find this argument very difficult to appreciate. What is urged is that a member of the Scheduled Caste is entitled to fight a reserved seat on the nomination paper filed by him as a member of the Scheduled Caste. To permit him to fight a general seat without the necessary nomination would constitute a discrimination between him and a member of the other castes, who would have to file a proper nomination. If we are right in the view that we have taken that no separate nomination is necessary and that a member of the Scheduled Caste is qualified by his very nomination to the reserved seat to contest the general seat as well, then no question of discrimination can possibly arise.

Having considered the relevant provisions of the Representation of People Act and the provisions of the Constitution, we are of opinion that the Tribunal was right in the decision that it came to and the challenge to the election of Sonule is not justified.

The result is that the appeal fails and must be dismissed with costs.

By Order of the Court,
' N. M. SHANBHANG, Dy. Registrar.

[No. 82/444/57/8541]

By Order,
A. N. SEN, Under Secy.